

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SERGEANT CHRISTOPHER D. FORAKER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
COLONEL L. AARON CHAFFINCH,	:	C.A.No.04-1207-GMS
individually and in his official capacity as	:	
Superintendent of the Delaware State Police;	:	
LIEUTENANT COLONEL THOMAS F.	:	
MACLEISH, individually and in his official	:	
capacity as Deputy Superintendent of the	:	
Delaware State Police; DAVID B. MITCHELL,	:	
in his official capacity as the Secretary of the	:	
Department of Safety and Homeland Security of	:	
the State of Delaware; and DIVISION OF	:	
STATE POLICE, DEPARTMENT OF SAFETY	:	
AND HOMELAND SECURITY, STATE OF	:	
DELAWARE,	:	
	:	
Defendants.	:	

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON COUNTS I AND II

Pursuant to Fed.R.Civ.P. 56, for the reasons stated in the accompanying Opening Brief, and there being no disputed issue of material fact, plaintiff Sgt. Christopher D. Foraker Moves that the Court issue an Order granting him summary judgment and finding that -

- (1) Under Count I, as a matter of law - plaintiff engaged in protected First Amendment free speech by filing his lawsuit, and this protected speech was a substantial or motivating factor in the retaliation against him. And because defendants have waived their Mt. Healthy affirmative defense, plaintiff has established liability. A trial on damages is ordered.
- (2) Under Count II, as a matter of law - plaintiff engaged in protected First Amendment

petitioning of the government for redress of grievances by filing his lawsuit, and this protected petitioning was a substantial or motivating factor in the retaliation against him. And because defendants have waived their Mt. Healthy affirmative defense, plaintiff has established liability. A trial on damages is ordered.

Respectfully Submitted,

THE NEUBERGER FIRM, P.A.

/s/ Stephen J. Neuberger
THOMAS S. NEUBERGER, ESQ. (#243)
STEPHEN J. NEUBERGER, ESQ. (#4440)
Two East Seventh Street, Suite 302
Wilmington, DE 19801
(302) 655-0582
TSN@NeubergerLaw.com
SJN@NeubergerLaw.com

Dated: January 25, 2006

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SERGEANT CHRISTOPHER D. FORAKER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
COLONEL L. AARON CHAFFINCH,	:	C.A.No.04-1207-GMS
individually and in his official capacity as	:	
Superintendent of the Delaware State Police;	:	
LIEUTENANT COLONEL THOMAS F.	:	
MACLEISH, individually and in his official	:	
capacity as Deputy Superintendent of the	:	
Delaware State Police; DAVID B. MITCHELL,	:	
in his official capacity as the Secretary of the	:	
Department of Safety and Homeland Security of	:	
the State of Delaware; and DIVISION OF	:	
STATE POLICE, DEPARTMENT OF SAFETY	:	
AND HOMELAND SECURITY, STATE OF	:	
DELAWARE,	:	
	:	
Defendants.	:	

ORDER

This _____ day of _____, 2006, there being no material issue in dispute, pursuant to Fed.R.Civ.P. 56, the Court grants summary judgment in favor of plaintiff Sgt. Christopher D. Foraker on Counts I and II. It is hereby Ordered that-

- (1) Under Count I, as a matter of law - plaintiff engaged in protected First Amendment free speech by filing his lawsuit, and this protected speech was a substantial or motivating factor in the retaliation against him. And because defendants have waived their Mt. Healthy affirmative defense, plaintiff has established liability. A trial on damages is ordered.
- (2) Under Count II, as a matter of law - plaintiff engaged in protected First Amendment

petitioning of the government for redress of grievances by filing his lawsuit, and this protected petitioning was a substantial or motivating factor in the retaliation against him. And because defendants have waived their Mt. Healthy affirmative defense, plaintiff has established liability. A trial on damages is ordered.

THE HONORABLE GREGORY M. SLEET

CERTIFICATE OF SERVICE

I, Stephen J. Neuberger, being a member of the bar of this Court do hereby certify that on January 25, 2006, I electronically filed this **Motion** with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Robert Fitzgerald, Esquire
Montgomery McCracken Walker & Rhoads, LLP
123 South Broad Street
Philadelphia, PA 19109

Richard M. Donaldson, Esquire
Montgomery McCracken Walker & Rhoads, LLP
300 Delaware Avenue, Suite 750
Wilmington, DE 19801

/s/ Stephen J. Neuberger
STEPHEN J. NEUBERGER, ESQ.

Foraker / Pleadings / Motion for SJ